

## Legal Services Corporation

## § 1628.4

(e) *Recipient*, as used in this part, means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

### § 1628.3 Policy.

(a) Recipients are permitted to retain from one fiscal year to the next LSC fund balances up to 10% of their LSC support.

(b) Recipients may request a waiver to retain a fund balance up to a maximum of 25% of their LSC support for special circumstances.

(c) Recipients may request a waiver to retain a fund balance in excess of 25% of a recipient's LSC support only for extraordinary and compelling circumstances, such as when a natural disaster or other catastrophic event prevents the timely expenditure of LSC funds, or when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, a payment from a lawsuit in which the recipient was a party, or a payment from an LSC-funded lawsuit, regardless of whether the recipient was a party to the lawsuit.

(d) A waiver pursuant to paragraph (b) or (c) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in § 1628.4(e).

(e) In the absence of a waiver, a fund balance in excess of 10% of LSC support shall be repaid to the Corporation. If a waiver of the 10% ceiling is granted, any fund balance in excess of the amount permitted to be retained shall be repaid to the Corporation.

(f) A recovery of an excess fund balance pursuant to this part does not constitute a termination under 45 CFR part 1606. *See* § 1606.2(c)(2)(ii).

(g) One-time and special purpose grants awarded by the Corporation are not subject to the fund balance policy set forth in this part. Revenue and expenses relating to such grants shall be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose

grant may be expended subsequent to the expiration date of the grant without the prior written approval of the Corporation. Absent approval from the Corporation, all unexpended funds under such grants shall be returned to the Corporation.

[65 FR 66642, Nov. 7, 2000, as amended at 80 FR 43968, July 24, 2015]

### § 1628.4 Procedures.

(a) A recipient may request a waiver of the 10% ceiling on LSC fund balances within 30 days after the submission to LSC of its annual audited financial statements. The request shall specify:

(1) The LSC fund balance as reported in the recipient's annual audited financial statements;

(2) The reason(s) for the excess fund balance;

(3) The recipient's plan for disposing of the excess fund balance during the current fiscal year;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's current fiscal year; and

(5) The special circumstances justifying the retention of the excess fund balance up to 25%, or the extraordinary and compelling circumstances set out in § 1628.3(c) justifying a fund balance in excess of 25%.

(b) Within 45 days of receipt of the recipient's waiver request submitted pursuant to paragraph (a) of this section, the Corporation shall provide a written response to the request and a written notice to the recipient of any fund balance due and payable to the Corporation as well as the method for repayment.

(c) In the event that repayment is required, the Corporation shall give written notice 30 days prior to the effective date for repayment. Repayment shall be in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Corporation shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(d) A recipient may submit a waiver request to retain a fund balance in excess of 25% of its LSC support prior to



## § 1628.5

the submission of its audited financial statements. The Corporation may, at its discretion, provide approval in writing. The request shall specify the extraordinary and compelling circumstances justifying the fund balance in excess of 25%; the estimated fund balance that the recipient anticipates it will accrue by the time of the submission of its audited financial statements; and the recipient's plan for disposing of the excess fund balance. Upon the submission of its annual audited financial statements, the recipient must submit updated information consistent with the requirements of paragraph (a) of this section to confirm the actual fund balance to be retained.

(e) The Corporation's written approval of a request for a waiver shall require that the recipient use the funds it is permitted to retain within the time period set out in the approval and for the purposes approved by the Corporation.

(f) Excess fund balances approved by the Corporation for expenditure by a recipient shall be separately reported by natural line item in the current fiscal year's audited financial statements. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

(g) The recipient shall promptly inform and seek guidance from the Corporation when it determines a need for any changes to the conditions on timing or purposes set out in the Corporation's written approval of a recipient's request for a waiver.

[65 FR 66642, Nov. 7, 2000, as amended at 80 FR 43968, July 24, 2015]

### § 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those set out in Chapter 3 of the Corporation's Accounting Guide for LSC Recipients should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period requires the prior written approval of the Corporation.

(b) Within 30 days of the submission of the recipient's annual audit, the recipient may apply to the Corporation for approval of the expenses associated

## 45 CFR Ch. XVI (10–1–15 Edition)

with the liquidation of the deficit balance in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs under 45 CFR part 1630.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in § 1628.4(a)(1) and (2). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other special circumstances giving rise to a deficit balance.

## PART 1629—BONDING OF RECIPIENTS

### Sec.

1629.1 General.

1629.2 Persons required to be bonded.

1629.3 Criteria for determining handling.

1629.4 Meaning of fraud or dishonesty.

1629.5 Form of bonds.

1629.6 Effective date.

AUTHORITY: Secs. 1006(b)(1)(A) and 1007(a)(3), Pub. L. 93–355, as amended, Pub. L. 95–222 (42 U.S.C. 2996e(1)(A) and 2996f(3)).

SOURCE: 49 FR 28717, July 16, 1984, unless otherwise noted.

### § 1629.1 General.

(a) If any program which receives Corporation funds is not a government, or an agency or instrumentality thereof, such program shall carry fidelity bond coverage at a minimum level of at least ten (10) percent of the program's annualized LSC funding level for the previous fiscal year, or of the initial grant or contract, if the program is a new grantee or contractor.